

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

RALPH GREEN

PETITIONER

v.

No. 1:94CR1-B

UNITED STATES OF AMERICA

RESPONDENT

MEMORANDUM OPINION

This matter comes before the court on the June 27, 2005, motion of *pro se* petitioner Ralph Green for a writ of *habeas corpus* under 28 U.S.C. § 2255. On March 16, 1995, a jury found the petitioner guilty of violating 21 U.S.C. § 841, conspiracy to possess cocaine with the intent to distribute it in violation of 21 U.S.C. § 846. In its judgment entered July 12, 1995, the court sentenced the petition to 292 months imprisonment, five years of supervised release, a \$1,000.00 fine, and a special assessment of \$100.00. The petitioner appealed the judgment on July 19, 1995. The Fifth Circuit Court of Appeals affirmed the conviction and sentence of the petitioner on January 30, 1997. The petitioner filed a petition for a writ of *certiorari*, which the United States Supreme Court denied on May 9, 1997. Ralph Green filed the instant petition for a writ of *habeas corpus* June 27, 2005. For the reasons set forth below, the instant petition shall be denied.

Discussion

The petitioner argues that he was sentenced improperly because the length of his sentence was based in part on facts not determined by a jury or admitted during sentencing, but instead contained in his Pre-Sentence Investigation Report, citing *United States v Booker*, 125 S.Ct 738 (2005). The petitioner seeks a new sentence based upon the holding in *Booker*. For the reasons

set forth below, the instant petition shall be denied. *Booker* applies only to those cases “pending on direct review or not yet final on January 12, 2005.” *United States v. Madrigal*, 2005 WL 913476 (5th Cir.). The petitioner’s case was final long before the January 12, 2005, cutoff date, as the United State Supreme Court denied *certiorari* on May 9, 1997. As such, the instant case is not one to which *Booker* applies, and the instant petition for a writ of *habeas corpus* under 28 U.S.C. § 2255 shall be dismissed with prejudice. A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 5th day of June, 2006.

/s/ Neal Biggers

NEAL B. BIGGERS
SENIOR U. S. DISTRICT JUDGE